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JOSEPH F. SPANIOL, JR.
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No. 86-630

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1986

BARBARA JEAN CUMMINGS, A Minor, by her Guardian ad Litem, WILLARD P. TECHMEIER, and LAVERNE H. CUMMINGS, Special Administratix of the ESTATE OF DENNIS G. CUMMINGS,

Petitioners,

vs.

BRIGGS & STRATTON RETIREMENT PLAN, THE FIRST WISCONSIN TRUST COMPANY, Plan Trustee, and BRIGGS & STRATTON RETIREMENT COMMITTEE, Plan Administrator,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

PETER W. BUNDE
Quarles & Brady
411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4497
(414) 277-5000

Counsel for Respondents

DAVID R. CROSS
Of Counsel

QUESTION PRESENTED FOR REVIEW

Whether a United States District Court has inherent or statutory equitable power to order ERISA plan fiduciaries to pay penison benefits to a plaintiff when the fiduciaries have done nothing wrong and the plaintiff has no entitlement to benefits under ERISA or the terms of the plan?

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STATEMENT OF THE CASE

Respondents, Briggs & Stratton Retirement Plan, The First Wisconsin Trust Company, and Briggs & Stratton Retirement Committee, incorporate by reference the statement of the case in the opinion of the United States Court of Appeals for the Seventh Circuit.[1] (Appendix A at pages 1-5.)

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[1]Respondents provide the following statement pursuant to Supreme Court Rule 28.1. The First Wisconsin Trust Company is the only corporate respondent. Its parent company is the First Wisconsin Corporation. It has no subsidiaries.

REASON FOR DENYING THE WRIT

The decision of the Court of Appeals was correct and should not be reviewed. It held that no equitable remedy should be imposed on defendants who have done nothing wrong. That holding is not contrary to this Court's decisions in *Porter v. Warner Co.*, 328 U.S. 395 (1946) or *Mitchell v. DeMario Jewelry*, 361 U.S. 288 (1960). The Court allowed equitable remedies in *Porter* and *Mitchell* because the defendants in those cases had violated federal law. In *Mitchell*, the corporate defendant had discriminated against some of its employees in violation of Section 15 of the Fair Labor Standards Act of 1938, 29 U.S.C. Section 215(a)(3). The defendants in *Porter* charged rents above those permitted by regulations issued under the Emergency Price Control Act of 1942, 50 U.S.C. App. Section 925(a).

It is undisputed that the respondents have not violated ERISA or any other law. The sole wrongdoer in this case, as petitioners concede, was Dennis Cummings. Their remedy was against him or his estate, not against the respondents.

CONCLUSION

The Court of Appeals held in favor of respondents because they have done nothing wrong. That holding should not be reviewed.

Respectfully submitted,

PETER W. BUNDE
Quarles & Brady
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Milwaukee, Wisconsin 53202-4497
(414) 277-5000

Counsel for Respondents

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Of Counsel